Caroline McDonald Wismiller

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IN THE

# Supreme Court of the United States

OCTOBER TERM 1955

No. 549

CAROLINE McDONALD WISMILLER, *Petitioner*,

v.

THE UNITED STATES COURT OF CLAIMS.

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

CAROLINE McDONALD WISMILLER, *Pro se.*
1419 Rhode Island Ave., N. W.
Washington 5, D. C.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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*To the Honorable, the Chief Justice and the Associated Justices of the Supreme Court of the United States:*

1. Your humble Petitioner comes pleading for the assistance of the judicial power of the United States Supreme Court whereby she may be fully compensated for a large estate lost to its legal heirs through errors in law and its administration.

2. Since the Court of Claims has so far departed from the accepted and usual course of judicial proceedings, and so far sanctioned such a departure by a lower court, it calls for an exercise of the United States Supreme Court's power of supervision.

3. She is requesting that your Honorable Court review the action taken by the United States Court of Claims on case No. 143-55. Filed April 4, 1955, and decided and dismissed November 8, 1955.

CAROLINE MCDONALD WISMILLER, *Plaintiff*,

v.

THE UNITED STATES, *Defendant*.

The Decree as follows:

> "This court therefore has no jurisdiction to pass upon the merits of Plaintiff's claim. Defendant's motion is granted and the petition dismissed. It is so ordered."

4. JURISDICTION OF THE U. S. SUPREME COURT.

The United States Supreme Court has jurisdiction to deal with every law and every situation involved in the Garrett Estate Case. Where a state is involved it has original jurisdiction. When the United States is involved it has appellate jurisdiction both as to law and fact.

Art. 3, Sec. 2, Ci. 1, U. S. Constitution:

> "The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to all controversies to which the United States shall be a party; to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citizens of the same state, claiming land under grants of differ-

ent states, and between a state, or the citizens thereof, and foreign states, citizens, or subjects."

Art. 3, Sec. 2, Ci. 2, U. S. Constitution:

"In all cases affecting ambassadors, other public ministers, and consuls, and those to which a state shall be a party, the Supreme Court shall have original jurisdiction. In all other cases before mentioned the Supreme Court shall have appellate jurisdiction both as to law and fact, with such exceptions and under such regulations as the Congress shall make."

5. Petitioner came to the United States Court of Claims under the provisions of that court for general jurisdiction which is now found under Title 28, U. S. Code Par. 1491, which provides that the Court of Claims shall have jurisdiction to render judgment upon any claim against the United States; "(1) Founded upon the Constitution." Under this heading are suits for recovery of just compensation. This class of litigation arises where the United States takes private property. A volume of this type of litigation followed World Wars I and II.

6. The Court of Claims, in this case, ignores the above provision, and seemingly argues against it. Petitioner brought to the Court of Claims the true facts in the case in a clear and concise way. That is what she expected the court to act upon first of all. But they say they are not given jurisdiction to review the action of the courts of Pennsylvania. So they do not really know what they did there, but they try to guess what they did. Why do they do it? This meddling in forbidden fields adds nothing but confusion in this case. It carries an undertone that might seem to condone or cover errors in the procedure.

7. In paragraph one at the top of page two in the opinion of the Court of Claims appears an account of a report which Petitioner does not hesitate to say is untruthful and therefore is misleading. She doubts that the court authorized it. In the case the Pennsylvania Supreme Court gave no opinion of its own. It was brought to light in the trial that the lower court had already awarded it. So they were done. They were then not obligated in any way. So it appears, there would, at least, be no need that the court make a false report. A few, not all, of the judges did affirm a written opinion of an Amicus Curiae brought in from the lower court, but the judges did not give an opinion of their own. The date of said report was Jan. 1953. The estate was unlawfully awarded April 27, 1949. Petitioner came Sept. 1949, with true identification of the decedent, and then made claim to the estate. She was rightfully claiming her inheritance which was then gone. Under the circumstances then she was always confronted with untruthful ridicule, but there was never one proof of truth that she was wrong.

8. In the opinion of the Court of Claims it is stated that Petitioner said that the action of the Attorney General was wrongful when he signed the Compromise Agreement. Petitioner did not so state. She did say that the agreement was unconstitutional, and the Attorney General signed it. They should have gone to the United States Supreme Court with their agreement. There they would have found that their procedure was illegal and it would have been stopped then for they were acting against the U. S. Constitution.

They should not have gone to the Attorney General. His signing it could mean nothing. Still they had

nothing. Even tho' Congress sanctioned it, in this case, they had nothing because they had failed to get proper authorization. It is, as stated, because the agreement was unconstitutional that Petitioner had a right to bring suit in the Court of Claims. Not, in any way, because of the Attorney General's signature.

9. Never the less, under this worthless, unconstitutional agreement, on April 27, 1949, the Garrett Estate was awarded and duly recorded in Deed Book C. J. P. No. 2514 Page 136, in the Office of the Recorder of Deeds in and for the County of Philadelphia, in accordance with the Act of May 15, 1945. The portion deeded to the Alien's, of course, was thus designated as Alien property. When found it was seized as such by the United States and put in the Office of the Custodian of Alien Property. There it was held and defended by United States Attorneys who appeared in all following court hearings to defend the procedure.

Can Aliens under any circumstances inherit United States property unless they first come to this United States and here become naturalized citizens? If so, how?

10. Errors and Constitutional Violations

The procedure was based on a false fact. The true identity of the decedent was unknown.

The Act of June 4, 1943, P. L. 866, 72 P. S. 2302, generally known as the Winner Act, was an expost facto law in the case and also a bill of attainder. As it was used to bar legal claims it also violated Art. V, Bill of Rights, U. S. Constitution. "No person shall be deprived of property without due process of law." While they were thus barring claims, they were pre-

paring to attain the property. After they attained the property they again permitted claims but since the property had then been awarded no one could then get it. For it was then gone as they had planned. This is proof that Art. V, Bill of Rights was violated.

To attain the property the State of Pennsylvania entered into a compromise agreement with the parties whom it appeared might be the next of kin of the decedent and might be entitled to inherit the estate. Said agreement was duly recorded in Deed Book C. J. P. No. 2514, Page 136, in the Office of the Recorder of Deeds in and for the County of Philadelphia, in accordance with the said Act of May 15, 1945. Thus they had taken the property. No one could now get it. To do this the State of Pennsylvania had violated Art. 1, Sec. 10, Ci. 1., U. S. Constitution. "No state shall enter into any treaty, alliance or confederation, pass any bill of attainder, expost facto law, or law impairing the obligation of contracts."

11. Your Petitioner therefore respectfully prays Your Honorable Court that her petition for writ of Certiorari to the United States Court of Claims be granted, and for this favor she will be sincerely thankful to the Supreme Court of the United States of America.

Respectfully submitted by

CAROLINE MCDONALD WISMILLER
*Pro se*

1419 Rhode Island Ave., N. W.
Washington 5, D. C.
Nov. 30, 1955.

# In the United States Court of Claims

No. 143–55

(Decided November 8, 1955)

## CAROLINE McDONALD WISMILLER *v.* UNITED STATES

*Miss Caroline McDonald Wismiller*, pro se.

*Mr. Alfred H. O. Boudreau, Jr.*, with whom was *Mr. Assistant Attorney General Warren E. Burger*, for the defendant. *Mr. Thomas Hogan* was on the brief.

ON DEFENDANT'S MOTION TO DISMISS

PER CURIAM: This case comes before us on defendant's motion to dismiss plaintiff's petition on the ground that the court lacks jurisdiction.

The plaintiff alleges that she was a first cousin of Henrietta E. Garrett, deceased, and that by reason thereof she is entitled to a share in the Garrett estate. She claims that the items not included in the will of the deceased consisted of $21,000,000 in bonds and two residences.

The plaintiff alleges that the administration of the estate of Henrietta E. Garrett began December 1, 1930; that she filed her claim in the Orphans' Court of Philadelphia County, Pennsylvania; that the auditing judge dismissed her claim; that she filed exceptions to the adjudication but that the exceptions were dismissed and the adjudication confirmed; that an appeal was taken to the Supreme Court of Pennsylvania where it was heard in November 1952 and dismissed January 5, 1953, when the Supreme Court of Pennsylvania affirmed the Orphans' Court opinion, and that her petition for certiorari to the United States Supreme Court was denied.

The decision of the Supreme Court of Pennsylvania is reported in the case of *In Re Garrett's Estate*, 372 Pa. 438, 94 A. 2d 357. The court specifically discusses the Wismiller claim and finds that the claimant was unable to substantiate any of her allegations with proof of any kind and that the claim was not shown by the record to have merit.

The action of the United States Supreme Court is reported in *Wismiller* v. *Estate of Garrett*, 345 U. S. 996 and on rehearing in 346 U. S. 842.

Plaintiff alleges that she then presented the matter to the United States Congress which did not take any action. She filed suit in this court on April 4, 1955.

Normally the disposition of property is committed to the State courts having jurisdiction thereof. An examination of the decision of the Supreme Court of Pennsylvania discloses that there was a long period of litigation in reference to the Garrett estate. We quote from the opinion, 94 A. 2d 357:

> Henrietta E. Garrett died a resident of Philadelphia County on November 16, 1930, intestate as to her residuary estate of over $17,000,000. Nearly 26,000 claims were filed in the Court below by persons claiming the estate as next of kin. The Orphans' Court appointed a Master and Examiners who held some 2,000 hearings and took the testimony of over 1,100 witnesses. The record composed mainly of testimony and exhibits, totals 390 volumes covering over 115,000 pages. After a painstaking examination of the thousands of claims which were presented, the Master submitted to the Orphans' Court on September 18, 1950, a 900 page report which included 2,077 findings of fact and 36 conclusions of law. The Master found that the decedent, Henrietta E. Garrett, nee Schaeffer, was survived by *three first cousins*, Herman Adolph Kretschmar, Howard Sigismund Kretschmar and Johann Peter Christian Schaefer I, and that these relatives were entitled, as next of kin, to her estate under the Intestate Act of June 7, 1917, P. L. 429, 20 P. S. § 1 et seq.

On page 360 of the same opinion it is disclosed that the claim of Caroline McDonald Wismiller was rejected by the trial court and the rejection was confirmed by the Supreme Court of Pennsylvania.

The plaintiff undertakes to bring her claim within the jurisdiction of this court by asserting that the action of the

Pennsylvania court was incorrect and that after such action a compromise agreement was entered into between representatives of the Commonwealth of Pennsylvania and the parties who had been determined to be the next of kin of the decedent, and that since the Attorney General of the United States signed the agreement whereby the Alien Property Custodian allegedly acquired some portion of the estate, the United States participated in unconstitutionally depriving the plaintiff of her alleged share in the estate, and that a constitutional question is thereby raised.

If, as alleged by plaintiff, the action of the Attorney General was wrongful, it would at most present a case sounding in tort which is not within the trial jurisdiction of this court.

The allegation is further made that the Master's office of the Orphans' Court did not abide by the laws set forth by the United States Constitution in handling the case and that this is the source of all the errors; that under the Bill of Rights it is provided that "No person shall be * * * deprived of life, liberty, or property, without due process of law."

Apparently, however, a hearing and disposition was had before the various courts in Pennsylvania having jurisdiction of the matter and we are not given jurisdiction to review the action taken by the courts of that state.

The plaintiff was not a party to the compromise agreement which it is alleged was entered into between representatives of Pennsylvania and the heirs as determined by the courts of that state, which agreement it is alleged was signed by the Attorney General of the United States, therefore no obligation of the United States can be spelled out as an implied contract. This court therefore has no jurisdiction to pass upon the merits of plaintiff's claim.

Defendant's motion is granted and the petition dismissed.

It is so ordered.

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HAROLD B. WILLEY, Clerk

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 549

CAROLINE McDONALD WIENTJES

v.

THE UNITED STATES COURT OF CLAIMS

WAIVER OF RIGHT TO FILE REPLY TO THE PETITION FOR WRIT OF CERTIORARI

The Government waives the right to file a reply to the petition for writ of certiorari in the above-entitled case.

SIMON E. SOBELOFF
SOLICITOR GENERAL